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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

SOTHA HOK,

Defendant and Appellant.

B206064

(Los Angeles County  
Super. Ct. No. BA259685)

APPEAL from a judgment of the Superior Court of Los Angeles County, Joan Comparet-Cassani, Judge. Dismissed.

Patrick Morgan Ford, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Paul M. Roadarmel, Jr., and Margaret E. Maxwell, Deputy Attorneys General, for Plaintiff and Respondent.

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Sotha Hok pled guilty to one felony count of burglary. The trial court sentenced him to four years in state prison, suspended the sentence, and placed Hok on formal probation. Five months later, the trial court found Hok had violated his probation. Hok failed to turn himself in as ordered, and two years later was arrested on an outstanding bench warrant. The trial court imposed the previously suspended four-year sentence. Hok appeals. We dismiss Hok's challenge to the guilty plea because Hok did not file a timely appeal or obtain a certificate of probable cause.

### **FACTS AND PROCEDURE**

On February 20, 2004, an information charged Sotha Hok with one count of first degree burglary, one count of receiving stolen property, one count of evading an officer, and one count of hit-and-run driving. Hok entered a plea of not guilty to all counts. On June 10, 2004, pursuant to a negotiated plea agreement, Hok pled guilty to one count of first degree residential burglary in violation of Penal Code section 459. The trial court sentenced Hok to state prison for the midterm of four years, suspended execution of the sentence, and placed Hok on probation. The court dismissed the remaining counts. Hok did not file a notice of appeal or obtain a certificate of probable cause after the June 10, 2004 sentencing.

On November 8, 2004, the trial court found that Hok was not in compliance with his probation conditions, released him on his own recognizance, and ordered that he enroll in a residential drug program by the next hearing set for eight days later. On January 6, 2005, with Hok present, the court expressed concern that Hok still had not enrolled in a program. The court revoked Hok's probation, and ordered him to return that afternoon to turn himself in. Hok did not return, and the court ordered a bench warrant.

More than two years later, in September 2007, Hok was arrested on the outstanding bench warrant. On December 19, 2007, Hok admitted he had violated his probation. The trial court imposed the suspended four-year state prison sentence, giving Hok 387 days of custody credit. Hok filed a notice of appeal the same day. He did not apply for a certificate of probable cause.

## ANALYSIS

Hok argues that his guilty plea was invalid because when he entered his guilty plea on June 10, 2004, he was not properly advised that he was waiving the privilege against self-incrimination. We cannot consider the merits of this argument. “A defendant who has pleaded guilty or nolo contendere to a charge in the superior court, and who seeks to take an appeal from a judgment of conviction entered thereon, may not obtain review of so-called ‘certificate’ issues, that is, questions going to the legality of the proceedings, including the validity of his plea, unless he has complied with section 1237.5 of the Penal Code and the first paragraph of rule 31(d) of the California Rules of Court [currently rule 8.304(b)]—which require him to file in the superior court a statement of certificate grounds as an intended notice of appeal within 60 days after rendition of judgment, and to obtain from the superior court a certificate of probable cause . . . .” (*People v. Mendez* (1999) 19 Cal.4th 1084, 1088, fns. omitted.)

Hok neither filed a statement for issuance of a certificate of probable cause, as required by Penal Code section 1237.5, nor filed a notice of appeal with the statement, as required by California Rule of Court, rule 8.304(b), within the 60-day period mandated by California Rule of Court rule 8.308. We therefore may not reach the merits of his challenge to the validity of his plea agreement, but must dismiss this portion of his appeal. (*People v. Mendez, supra*, 19 Cal. 4th at p. 1096.) “Our Supreme Court has expressly disapproved the practice of applying the rule loosely in order to reach issues that would otherwise be precluded.” (*People v. Puente* (2008) 165 Cal.App.4th 1143, 1149 [citing *People v. Mendez, supra*, 19 Cal.4th at pp. 1098-1099]).

By the same token, we do not reach the merits of his challenge to the court’s imposition of the four-year sentence upon revocation of parole. Hok bargained for a four-year sentence in his plea agreement. His argument that it was improper for the trial court to impose this agreed-upon sentence “challenges the very bargain on which the plea was rendered, and thus the validity of the plea itself.” (*People v. Buttram* (2003) 30 Cal.4th 773, 776.) A certificate of probable cause is therefore necessary for appeal of this

issue as well, because “he is in fact challenging the very sentence to which he agreed as part of the plea. Since the challenge attacks an integral part of the plea, it is, in substance, a challenge to the validity of the plea, which requires compliance with . . . section 1237.5 and rule 31(d) [now rule 8.304(b)].” (*People v. Panizzon* (1996) 13 Cal.4th 68, 73; see *People v. Hester* (2000) 22 Cal.4th 290, 295 [“defendants are estopped from complaining of sentences to which they agreed”].)

### **DISPOSITION**

The appeal is dismissed.

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WEISBERG, J.\*

We concur:

MALLANO, P.J.

ROTHSCHILD, J.

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\*Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.